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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/680,206	10/06/2000	Christian Benz	387778.0107	8643
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EXAMINER

HESS, DANIEL A

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 02/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/680,206

Applicant(s)

BENZ ET AL.

Examiner

Daniel A Hess

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-7 and 9-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-7 and 9-24 is/are allowed.
- 6) ☒ Claim(s) 25-27 and 29 is/are rejected.
- 7) ☒ Claim(s) 28 and 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

**DETAILED ACTION**

1. Receipt is acknowledged of amendment filed December 30, 2002, which has been entered in the file of record.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 25-27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berner (US 5,519,210) in view of Falk (US 5,760,913).

In Berner, there is shown (figure 1) a housing 1 having an 'intake slot' 3 (column 5, line 58). There is (figure 1, 33-36 and 61-62) a transport structure for transporting the sheet along transport path T (column 8, line 66 to column 9, line 15). There is a detecting means, shown in

Art Unit: 2876

figure 2. A reflectance measuring lens 41, a light source 42, a photoelectric receiver 44, and a signal amplifier 45 are involved (column 4, lines 44-56). Spectral (color) data is obtained (column 5, lines 17-28). This data is converted to electrical signals (column 5, line 15). It is inherent that Berner includes controller of some kind to control a system having automatic transport, evaluation, and communication with an outside system. An evaluation unit 16 (see figure 2; column 5, line 16) is present. There is (abstract lines 11-12; column 3, line 33) automatic transport of the strips or sheets. Further, there is (column 5, lines 45-55) external communication with an outside system. There is further a densitometer (column 1, line 43) taking measurements in red, green and blue (column 3, lines 30-35; column 1, lines 47-51). There are (column 3, line 16) electrical signals produced representing the data. A view of figure 1 makes clear that there is both a reflectance measuring lens 41 above the sample (column 4, line 48) and a transmission measuring lens 51 below the sample (column 5, line 14).

Berner fails to show that the test strip contains encoded information that is used to convey what type of test strip it is, or what the orientation of the test strip is.

Falk shows (column 5, lines 30-45, especially lines 38-41) that there is a special key on a test strip that conveys the type of test strip (in this case the ordering of the colors). Falk further shows (column 8, lines 1-14) that there are registration marks to establish the orientation of the strip in the reader (column 8, line 5). See also figure 5, 502 to note these various registration marks.

In view of Falk's teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known coding on the test strip that is employed to generate a unique strip because as Falk notes, the varied placement of color

Art Unit: 2876

patches 'minimizes the undesirable effects of density variation across a printed page' (column 5, lines 34-36). It further would have been obvious to employ orientation markings as per Falk in the teachings of Berner because if the system can distinguish among different orientations, the chances for an error caused by the user are reduced.

Re claim 27 in particular: Cargill shows (column 38, lines 9-25) a bar coding scheme on the test strip. To read this, the reader device must have a bar code reader. Since the system is automated, it must interact with the controller.

In view of Cargill's teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known barcode on the strips and barcode reader as part of the reader device as taught by Cargill in the teachings of Berner, using the barcode as an identification means because if the user manually enters the wrong code by mistake, improper reading of the test strips can result and errors can thereby be introduced into film processing.

### ***Response to Arguments / Amendments***

5. The examiner notes that what was not originally in the claims is actually not patentable, for, as Falk teaches above, the orientation of a test strip is shown to be machine – read. However, as the applicant has pointed out, the prior art fails to teach the inventive scheme of employing color patches in a coding scheme on the test strip to indicate an identity of the test strip, such that the reader is able to process this code of colors and determine a corresponding test strip identity.

Art Unit: 2876

***Allowable Subject Matter***

6. Claims 28 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art of fails to teach a test strip of the type claimed, wherein are employed color patches in a coding scheme on the test strip to indicate an identity of the test strip, such that the reader is able to process this code of colors and determine a corresponding test strip identity.

Further discussion of reasons for allowability on these claims can be seen below, re claims 1, 3-7 and 9-24.

7. Claims 1, 3-7 and 9-24 are allowed.

The prior art of fails to teach a system for the automatic photoelectric measurement of measuring fields contained on an original, wherein, in addition to the various other elements as recited in each independent claim, there are color patches in a coding scheme on the test strip to indicate an identity of the test strip, such that the reader is able to process this code of colors and determine a corresponding test strip identity.

The nearest available prior art of record, Cargill et al. (US 5,118,183) teaches )column 38, lines 9-25) a strip reader densitometer having an automatic calibration procedure. This calibration procedure however, does not include generating an ID for calling up a particular test strip profile from memory. Instead (column 32, lines 44-60) the operator selects which control strip will be used.

Art Unit: 2876

Falk (US 6,141,120) shows a color calibration system as well. In Falk, however, while a coding system does encode different test strip arrangements (column 5, lines 32-46), those arrangements are generated on-the-fly and do not reference strip definitions stored in memory. Also, the encoding is not blocks of different colors necessarily. The value of employing blocks of colors is that the densitometer is already configured to read blocks of color.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A Hess whose telephone number is (703) 305-3841. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

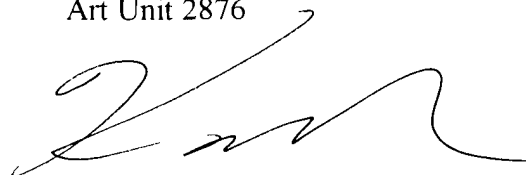
9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on (703) 305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

10. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



DH  
January 31, 2003

Daniel A Hess  
Examiner  
Art Unit 2876



KARL D. FRECH  
PRIMARY EXAMINER